

§ 1210.31

Department of Justice or the General Accounting Office.

(b) The contractor shall be subject to the disclosure provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a(m)), and to applicable Federal and state laws and regulations pertaining to debt collection practices, including the Fair Debt Collection Practices Act, 15 U.S.C. 1692. The contractor shall be strictly accountable for all amounts collected.

(c) The contractor shall be required to provide to the MSPB any data contained in its files relating to the debt account upon agency request or upon returning an account to the MSPB for referral to the Department of Justice for litigation.

§ 1210.31 Referral to the Department of Justice or the General Accounting Office.

Debts over \$600 but less than \$100,000 which the MSPB determines can neither be collected nor otherwise disposed of will be referred for litigation to the United States Attorney in whose judicial district the debtor is located. Claims for amounts exceeding \$100,000 shall be referred for litigation to the Commercial Litigation Branch, Civil Division of the Department of Justice.

§ 1210.32 Compromise, suspension and termination.

(a) The Chairman of the MSPB or his designee may compromise, suspend or terminate the collection of debts where the outstanding principal is not greater than \$20,000. MSPB procedures for writing off outstanding accounts are available to the public.

(b) The Chairman of the MSPB may compromise, suspend or terminate collection of debts where the outstanding principal is greater than \$20,000 only with the approval of, or by referral to the United States Attorney or the Department of Justice.

(c) The Chairman of the MSPB will refer to the General Accounting Office (GAO) debts arising from GAO audit exceptions.

§ 1210.33 Omissions not a defense.

Failure to comply with any provisions of this rule may not serve as a defense to any debtor.

5 CFR Ch. II (1–1–07 Edition)

PARTS 1211–1215 [RESERVED]

PART 1216—TESTIMONY BY MSPB EMPLOYEES RELATING TO OFFICIAL INFORMATION AND PRODUCTION OF OFFICIAL RECORDS IN LEGAL PROCEEDINGS

Subpart A—General Provisions

Sec.

- 1216.101 Scope and purpose.
- 1216.102 Applicability.
- 1216.103 Definitions.

Subpart B—Demands or Requests for Testimony and Production of Documents

- 1216.201 General prohibition.
- 1216.202 Factors the MSPB will consider.
- 1216.203 Filing requirements for litigants seeking documents or testimony.
- 1216.204 Service of requests or demands.
- 1216.205 Processing requests or demands.
- 1216.206 Final determination.
- 1216.207 Restrictions that apply to testimony.
- 1216.208 Restrictions that apply to released records.
- 1216.209 Procedure when a decision is not made prior to the time a response is required.
- 1216.210 Procedure in the event of an adverse ruling.

Subpart C—Schedule of Fees

- 1216.301 Fees.

Subpart D—Penalties.

- 1216.401 Penalties.

AUTHORITY: 5 U.S.C. 1204(h); 31 U.S.C. 9701.

SOURCE: 71 FR 17967, Apr. 10, 2006, unless otherwise noted.

Subpart A—General Provisions

§ 1216.101 Scope and purpose.

(a) This part establishes policy, assigns responsibilities and prescribes procedures with respect to:

(1) The production or disclosure of official information or records by MSPB employees, advisors, and consultants; and

(2) The testimony of current and former MSPB employees, advisors, and consultants relating to official information, official duties, or the MSPB's record, in connection with federal or

Merit Systems Protection Board

§ 1216.103

state litigation in which the MSPB is not a party.

(b) The MSPB intends this part to:

(1) Conserve the time of MSPB employees for conducting official business;

(2) Minimize the involvement of MSPB employees in issues unrelated to MSPB's mission;

(3) Maintain the impartiality of MSPB employees in disputes between private litigants; and

(4) Protect sensitive, confidential information and the deliberative processes of the MSPB.

(c) In providing for these requirements, the MSPB does not waive the sovereign immunity of the United States.

(d) This part provides guidance for the internal operations of MSPB. It does not create any right or benefit, substantive or procedural, that a party may rely upon in any legal proceeding against the United States.

§ 1216.102 Applicability.

This part applies to demands and requests to current and former employees, advisors, and consultants for factual or expert testimony relating to official information or official duties or for production of official records or information, in legal proceedings in which the MSPB is not a named party. This part does not apply to:

(a) Demands upon or requests for an MSPB employee to testify as to facts or events that are unrelated to his or her official duties or that are unrelated to the functions of the MSPB;

(b) Demands upon or requests for a former MSPB employee to testify as to matters in which the former employee was not directly or materially involved while at the MSPB;

(c) Requests for the release of records under the Freedom of Information Act, 5 U.S.C. 552, or the Privacy Act, 5 U.S.C. 552a; or

(d) Congressional demands and requests for testimony, records or information.

§ 1216.103 Definitions.

The following definitions apply to this part.

(a) *Demand* means an order, subpoena, or other command of a court or

other competent authority for the production, disclosure, or release of records or for the appearance and testimony of an MSPB employee in a legal proceeding.

(b) *General Counsel* means the General Counsel of the MSPB or a person to whom the General Counsel has delegated authority under this part.

(c) *Legal proceeding* means any matter before a court of law, administrative board or tribunal, commission, administrative law judge, hearing officer or other body that conducts a legal or administrative proceeding. Legal proceeding includes all phases of litigation.

(d) *MSPB* means the Merit Systems Protection Board.

(e) *MSPB employee* or *employee* means:

(1)(i) Any current or former employee of the MSPB;

(ii) Any other individual hired through contractual agreement by or on behalf of the MSPB or who has performed or is performing services under such an agreement for the MSPB; and

(iii) Any individual who served or is serving in any consulting or advisory capacity to the MSPB, whether formal or informal.

(2) This definition does not include persons who are no longer employed by the MSPB and who agree to testify about general matters, matters available to the public, or matters with which they had no specific involvement or responsibility during their employment with the MSPB.

(f) *Records* or *official records and information* all information in the custody and control of the MSPB, relating to information in the custody and control of the MSPB, or acquired by an MSPB employee in the performance of his or her official duties or because of his or her official status, while the individual was employee by or on behalf of the MSPB.

(g) *Request* means any informal request, by whatever method, for the production of records and information or for testimony which has not been ordered by a court of other competent authority.

(h) *Testimony* means any written or oral statements, including depositions, answers to interrogatories, affidavits,